

CCAC's motion will be granted.

## **I.BACKGROUND**

The plaintiff in this action, O.F. by and through her guardian and next friend, N.S., in the care of Chester Special Education Law Clinic (Plaintiff), filed a Complaint against the School District and the Pennsylvania Department of Education ("PDE") in February 2000 and then filed an Amended Complaint in March 2000. The Amended Complaint consisted of five claims, two of which were dismissed upon defendant School District's Motion to Dismiss. The three surviving claims are 1) a violation of the Individuals with Disabilities Education Act ("IDEA") for failure to provide Plaintiff with a free appropriate public education ("FAPE"), 2) a violation of § 504, the Rehabilitation Act of 1973, 29 U.S.C. § 794, and 3) a violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 ("ADA").

In June 2000, this Court issued an order joining CCAC and the Police Department of the City of Chester. The School District then filed a Joinder Complaint which asserts Plaintiff's allegations include actions attributable to CCAC and does not allege any new facts. CCAC now moves to dismiss that Joinder Complaint.

## **II.LEGAL STANDARD**

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that, in response to a pleading, a defense of "failure to state a claim upon which relief can be granted" may be raised by motion. Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss under Rule 12(b)(6), a court must take all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). The court must only consider those facts alleged in the complaint in considering such a motion. See ALAv.

CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The pleader must provide sufficient information to outline the elements of the claim, or to permit inference to be drawn that these elements exist. Kostv. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). A complaint should be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

### **III. DISCUSSION**

As explained *supra*, three of Plaintiff's original five claims exist. They are the only claims for which CCAC could be liable. Each claim and its applicability to CCAC is addressed in turn below.

#### **A. The IDEA/FAPE Claim**

The School District concedes the IDEA/FAPE claim is clearly not applicable to CCAC because the ambulance company is in no way associated with the School District and PDE and their responsibilities to provide a free appropriate public education as set forth by IDEA.

#### **B. The Rehabilitation Act Claim**

The Rehabilitation Act claim also is not applicable to CCAC. Section 794 under the Act prohibits discrimination by programs and activities which receive federal financial assistance. Plaintiff's Amended Complaint asserts the link between the School District and PDE and federal assistance is money allocated to the School District or PDE by the United States Department of Education. Furthermore, Plaintiff's claim under this act is she was discriminated against because of her handicap and the discrimination resulted in the School District and PDE

failing to provide Plaintiff with free appropriate public education. Clearly this claim does not reach CCAC.

**C. The ADA Claim**

Finally, Plaintiff's ADA claim is not applicable to CCAC. Again, this claim was made because Plaintiff is alleged to be handicapped and the School District and/or PDE are public entities which allegedly discriminated against Plaintiff because of her handicap by excluding Plaintiff from participation in and denying "the benefits of these services, programs, and activities of the *defendant* public agencies." Plaintiff's Amended Complaint ¶30 (emphasis added). The Court reads this claim to speak specifically to the School District and PDE who were the only defendants named for this claim and whose conduct allegedly prevented Plaintiff from accessing the educational opportunities owed to her. This reading, the Court believes, is entirely consistent with the other claims in the Amended Complaint and the choice Plaintiff made when naming defendants. If Plaintiff intended to assert CCAC also violated the ADA by its own discriminatory conduct, Plaintiff would have articulated CCAC's conduct and violation as she articulated the School District's and PDE's conduct and violations. Furthermore, Plaintiff neither makes a claim nor asserts facts which would indicate she was excluded from participation in and denied the benefits of these services, programs and activities of an ambulance company. This ADA claim does not reach CCAC.

**IV. CONCLUSION**

For the reasons set forth above, Crozer Chester Medical Center's Motion to Dismiss will be Granted. An appropriate order follows.

AND NOW, this 9<sup>th</sup> day of November, 2000, upon consideration of defendant Crozer Chester Medical Center's Motion to Dismiss (Docket No. 20) and defendant Chester Upland School District's Response thereto (Docket No. 22), it is **ORDERED** that Crozer

ChesterMedicalCenter’sMotiontoDismissis **GRANTED.**Thiscaseisdismissedasto  
defendantCrozerChesterMedicalCenter.

BYTHECOURT:

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RONALDL.BUCKWALTER,J.